

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

PAN AMERICAN AIRWAYS CORP.,)
Plaintiff/Counterclaim Defendant,)
)
v.)
)
ROBERT E. BARNES,)
Defendant/Counterclaim Plaintiff.)
)

C.A. No. 04-10515-JLT

**PLAINTIFF/COUNTERCLAIM DEFENDANT, PAN AMERICAN
AIRWAYS CORP.'S, MOTION IN LIMINE FOR A PRE-TRIAL RULING
AS TO CHOICE OF LAW TO BE APPLIED TO PLAINTIFF'S CLAIMS
AND DEFENDANT'S COUNTERCLAIMS**

The plaintiff/counterclaim defendant, Pan American Airways Corp. (“Pan Am”), requests that this Honorable Court enter a pre-trial ruling clarifying the choice of law to be applied to the plaintiff’s claims and the defendant’s counterclaims at the time of trial. As grounds for this motion, Pan Am states as follows:

1. Pan Am has brought the instant action against the defendant/counterclaim plaintiff, Robert Barnes (“Barnes”) seeking recovery of monetary damages suffered by Pan Am as a result of Barnes’ failure to properly perform his job duties while employed by Pan Am as its Vice President of Maintenance. The damages sought consist of monies paid to service certain aircraft engines following an investigation by the Federal Aviation Administration as to the storage and preservation of the subject aircraft engines during Barnes’ employment with Pan Am.
2. The events underlying the plaintiff’s claims primarily occurred in Portsmouth, New Hampshire where Pan Am housed its airline equipment, where Barnes performed his job duties while employed by Pan Am and where the Federal Aviation Administration primarily conducted its investigation into the storage and preservation of Pan Am’s aircraft engines at Pan Am’s Portsmouth, New Hampshire facility. Thus, New Hampshire law should control the issues raised in Pan Am’s claims against Barnes.
3. The law controlling Barnes’ counterclaim for defamation should be Massachusetts law. Barnes’ defamation counterclaim against Pan Am arises out of Pan Am’s service of the Summons and Complaint at Barnes’ workplace at Logan Airport in Boston, Massachusetts. Moreover, Barnes resided and was employed in Massachusetts throughout the relevant period. Thus, Massachusetts law should be applied to the defamation claims asserted by Barnes against Pan

Am.

4. Pan Am requests that this Honorable Court clarify the choice of law issues, prior to trial, so that the parties may properly prepare and file with the Court their Requests for Jury Instructions, as well as other trial-related Motions and pleadings.

WHEREFORE, the plaintiff/counterclaim defendant, Pan American Airways Corp, respectfully requests that this Honorable Court enter a pre-trial ruling clarifying the choice of law to be applied to the plaintiff's claims and the defendant's counterclaims at the time of trial.

Respectfully submitted,
By the Plaintiff/Counterclaim Defendant,
Pan American Airways Corporation,
By its attorneys,

John J. O'Brien, Jr.
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DATED: September 8, 2006

CERTIFICATE OF SERVICE

I, John J. O'Brien, Jr., attorney for the plaintiff/counterclaim defendant, Pan American Airways Corporation, hereby certify that on the ____ day of September, 2006, I served true copies of:

**PLAINTIFF/COUNTERCLAIM DEFENDANT, PAN AMERICAN
AIRWAYS CORP.'S, MOTION IN LIMINE FOR A PRE-TRIAL RULING
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by hand-delivery to the following counsel of record:

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John J. O'Brien, Jr.